

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

BENITA W SCOTT

**16-05196-5-SWH
CHAPTER 13**

**AMENDED MOTION FOR RELIEF FROM THE AUTOMATIC
STAY OF SECTION 362 OR IN THE ALTERNATIVE ADEQUATE PROTECTION**

COMES NOW the Wake County Board of Education (“the Board”) and respectfully shows the Court the following:

1. On October 4, 2016, the Debtor, Benita W. Scott (“the Debtor-Surety”), filed a petition with the Bankruptcy Court for the Eastern District of North Carolina under Chapter 13 of the United States Bankruptcy Code (“Bankruptcy Code”).

2. During the years 2008 through 2013, the Debtor-Surety, a North Carolina licensed bail agent and professional surety, wrote various bonds to secure the release of several defendants who were incarcerated in the Wake County Jail. See attached Exhibit A for a listing of 27 Wake County District Court criminal cases that are the subject of this motion for relief.

3. On April 1, 2014, prior to the Debtor’s Chapter 13 filing, the Wake County Board of Education filed 27 Motions to Strike Electronic Order Setting Aside Forfeitures and Motions for Sanctions in the cases referenced in Exhibit A (“Motions”).

4. The Motions allege that because of the fraudulent actions on the part of the Debtor-Surety, or an agent of the Debtor-Surety, the Wake County Clerk of Court issued electronic orders setting aside 27 bond forfeiture judgments against the Debtor-Surety in the cases noted on the attached Exhibit A.

5. In the Motions, the Board moves the Court to strike the electronic orders setting aside the bond forfeiture judgments and to impose monetary sanctions against the Debtor-Surety.

6. The bankruptcy trustee cannot cure Debtor’s liability nor provide adequate assurance that Debtor or the bankruptcy trustee will cure the total amount of the bonds (\$36,500) and any additional amount of sanctions sought in the Motions.

7. The Board seeks to have a hearing on its Motions before a Wake County District Court Judge so the matters can be ruled upon by the court.

8. Since the Motions were initiated in Wake County District Court prior to the Debtor-Surety's Chapter 13 filing, the Wake County Board of Education is entitled to relief from the Automatic Stay pursuant to § 362(d)(1) of the Bankruptcy Code for cause shown including, but not limited to, adequate protection.

9. The Notice of Motion that is required by the court is attached as Exhibit B.

WHEREFORE, the Wake County Board of Education prays the Court as follows:

1. Modify the Automatic Stay of § 362(a) of the Bankruptcy Code to permit the Board to proceed with hearings in Wake County District Court in connection with the Motions;

2. As an alternative to the relief prayed for above, grant adequate protection to the Wake County Board of Education for its rights as a beneficiary of forfeited bonds;

3. Grant the Wake County Board of Education reasonable costs incurred in connection with this proceeding; and

4. Grant the Wake County Board of Education such other and further relief as may seem just and proper.

This the 30th day of June 2017.

THARRINGTON SMITH, L.L.P.

/s/ Rod Malone

Rod Malone

N.C. State Bar No. 16728

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Raleigh, North Carolina

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Facsimile: (919) 861-1338

ATTORNEY FOR WAKE COUNTY

BOARD OF EDUCATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Amended Motion for Relief From the Automatic Stay of Section 362 or in the Alternative Adequate Protection** was served upon all parties noted on the following page by placing it in the United States mail, postage prepaid, addressed to each party as follows:

Benita W. Scott
9052 Chelsea Drive
Raleigh, NC 27603-8134

Paul Danny Bradford
Bradford Law Offices, PLLC
455 Swiftside Drive, #106
Raleigh, NC 27518

John F. Logan
Office of the Chapter 13 Trustee
P.O. Box 61039
Raleigh, NC 27661-1039

Affected parties on the attached matrix

This the 30th day of June 2017.

THARRINGTON SMITH, L.L.P.

/s/ Rod Malone
Rod Malone
N.C. State Bar No. 16728
Post Office Box 1151
Raleigh, North Carolina 27602
Tel: 919-821-4711
Fax: 919-861-1338
Attorney for Wake County Board of Education

Cc: Matthew Van Horn
David Saacks

EXHIBIT A

LIST OF DEBTOR-SURETY WAKE COUNTY DISTRICT COURT CASES

State v. Kevin Edral Douglas; 2008 CR 39372; Bond A; \$1,500
State v. Kevin Douglas; 2007 CR 44557; Bond A; \$1,500
State v. Tichina Oshea Green; 2008 CR 10627; Bond A; \$1,000
State v. Randy Salazar; 2008 CR 45370; Bond A; \$1,000
State v. Emanuel J. Defreece; 2007 CR 49092; Bond B; \$1,000
State v. Leonard L. Williams; 2009 CR 9433; Bond A; \$3,000
State v. Marcus Allen Campbell; 2008 CR 20927; Bond B; \$3,000
State v. William Alexis Washington; 2008 CR 73841; Bond A; \$1,000
State v. Edward Acosta; 2009 CR 41092; Bond A; \$3,000
State v. Robert William Van Horn; 2009 CR 24851; Bond B; \$500
State v. Wesley James Williams, III; 2006 CR 46978; Bond A; \$500
State v. Hector Garcia, Jr.; 2009 CR 23972; Bond B; \$500
State v. Joseph Wayne Ambrose; 2009 CR 205220; Bond C; \$1,000
State v. Joseph Wayne Ambrose; 2010 CR 208037; Bond A; \$3,000
State v. Allison Carry; 2009 CR 42018; Bond A; \$500
State v. Joseph Wayne Ambrose; 2010 CR 208035; Bond A; \$2,000
State v. Kyle Anthony Harris; 2010 CR 219446; Bond A; \$1,000
State v. Charles Franklin Hamilton; 2010 CR 224723; Bond A; \$3,000
State v. Kimberly Joy Horan; 2009 CR 39001; Bond B; \$2,000
State v. Damien Edward Mitchell; 2011 CR 202196; Bond A; \$500
State v. Ervin Lashawn Sanders; 2010 CR 215005; Bond A; \$500
State v. Eliot Hankerson; 2011 CR 223586; Bond A; \$1,200
State v. Rodney D. Pickett, II; 2011 CR 724470; Bond A; \$1,000
State v. Brian Daniel Schaaf; 2012 CR 205038; Bond A; \$800
State v. Joshua David Freeman; 2012 CR 220136; Bond A; \$1,000
State v. Joshua David Freeman; 2011 CR 743299; Bond A; \$1,000
State v. Derek S. Bausch; 2012 CR 4727; Bond A; \$500

EXHIBIT B

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IN RE:

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NOTICE OF MOTION

TAKE NOTICE that a motion has been filed by the Wake County Board of Education. A copy of the motion accompanies this notice.

TAKE FURTHER NOTICE that any response, including objection, to the relief requested in the attached motion, should be filed with the Clerk of the Bankruptcy Court within **FOURTEEN (14) DAYS** of the date of this Notice and a copy served on the attorney identified below and upon other parties as required by law or Court order. Any response shall clearly identify the specific motion to which the response is directed, and it shall comply fully with any Local Bankruptcy Rules applicable.

TAKE FURTHER NOTICE that no hearing will be held on this motion unless a response is timely filed and served, in which case, the Court will conduct a hearing and provide notice of the time, date and place of hearing.

This the 30th day of June 2017.

THARRINGTON SMITH, L.L.P.

/s/ Rod Malone

Rod Malone

N.C. State Bar No. 16728

Post Office Box 1151

Raleigh, North Carolina

Email: rmalone@tharringtonsmith.com

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*ATTORNEY FOR WAKE COUNTY
BOARD OF EDUCATION*

EXHIBIT C

Brock & Scott, PLLC
ATTN: Neil D. Jonas, Esq.
5121 Parkway Plaza Dr., Suite 300
Charlotte, NC 28217

Home Loan Services
150 Allegheny Center
Pittsburgh, PA 15212

SPS
Attn: Managing Agent
P. O. Box 65250
Salt Lake City, UT 84165-0250

Synchrony Bank
C/O Recovery Management Sys. Corp.
25 SE 2nd Ave., Suite 1120
Miami, FL 33131-1605

Us Dept Of Ed/gleisi
Po Box 7860
Madison, WI 53704